BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
Chairman
WILLIAM A. MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
MIKE GLEASON
Commissioner
KRISTIN K. MAYES
Commissioner

IN THE MATTER OF QWEST CORPORATION'S COMPLIANCE WITH SECTION 252(e) OF THE TELECOMMUNICATIONS ACT OF 1996.	Docket No. RT-00000F-02-0271
IN THE MATTER OF US WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH SECTION 271 OF THE TELECOMMUNICATIONS ACT OF 1996.	Docket No. T-00000A-97-0238
ARIZONA CORPORATION COMMISSION, Complainant, v. QWEST CORPORATION, Respondent.	Docket No. T-01051B-02-0871

ARIZONA DIALTONE, INC.'S

POST-HEARING BRIEF REGARDING

THE PROPOSED SETTLEMENT

The proposed Settlement Agreement needs modification. Without modification the proposed Settlement is not in the public interest, and it should not be approved by the Commission.

Any settlement should achieve several basic concepts: 1) The disputed claims should be resolved. 2) There should be appropriate compensation for the claims that are being released, and 3) the participants should know what they are getting and what they are giving up. As written, the proposed Settlement fails in every category.

The proposed Settlement Agreement, with all of its qualifying circumstances and other issues of proof, leaves the CLECs unsure of what compensation or eligibility may be disputed by Qwest. This uncertainty would probably lead to yet more disputes and hearings. Also, the release is a "wish list" drafted by Qwest; and, the release was acknowledged as overbroad by both Qwest and Staff at the Hearing.

Unfortunately, the smaller CLECs are the ones that were most directly hurt by Qwest's anti-competitive conduct that is the subject of these Dockets. And it is the smaller CLECs that can least afford to litigate with Qwest over these issues post-Settlement. There should be certain and prompt payments to the CLECs, with a minimum of hurdles and pitfalls that the injured parties have to clear, just like the payments to the State under the proposed Settlement. The potential for game playing must be removed from the proposed Settlement.

CHANGES AND CLARIFICATIONS TO THE PROPOSED SETTLEMENT

The proposed Settlement should be modified and clarified in the following respects to fairly meet the basic goals of a reasonable Settlement.

- Arizona Dialtone is an eligible CLEC for the credit baskets, which appears to be undisputed.
- The credit baskets should not be capped because only Qwest has all the numbers and data.
- Arizona Dialtone's amount under Section 3 is $319,004, which is Qwest's number and should be undisputed.
- Each credit basket should be separately and independently subject to agreement by a CLEC, with an appropriately narrow and tailored release for each accepted basket.
- The overbroad draft releases must be rewritten.
- Immediate payment or credit for all owed amounts should be made by Qwest without cumbersome procedures or delays.
- Proxy numbers, based on Qwest's averages under the secret agreements, should

be used for the Section 4 and Section 5 credit baskets to avoid proof problems and future disputes.

- Arizona Dialtone's credit calculations under § 4 and § 5 should be based on an earlier UNE-P conversion date, as allowed under the Global Crossing secret agreement, and as should have been done by Qwest in any event.
- All credit basket time periods should be extended to the full original duration of the Eschelon and McLeod secret agreements.
- All payments under all credit baskets should be payable in cash or credits, at the CLEC's option, under certain circumstances.
- Both pre-judgment and post-judgment interest should be paid on all credit basket amounts to fairly compensate CLECs and to motivate Qwest to make immediate payment.
- Qwest and settling CLECs should specifically consent and agree to the jurisdiction of the Commission for any future disputes relating to the Settlement.

This Opening Brief will discuss these important concepts, some of which may not be significantly contested by other parties' Opening Briefs. Therefore, it should be more efficient, and so we will wait until our Reply Brief, to propose specific language for your consideration to modify the proposed Settlement.

QWEST'S WRONGFUL CONDUCT.

It is impossible to discuss the proposed Settlement without reference to the intentional and unlawful conduct that is the subject of these Dockets. Qwest had entered into a number of agreements regarding pricing and services with certain CLECs. Instead of filing these agreements with the Commission for approval and allowing other CLECs to opt-in to their terms, Qwest elected to keep them secret. The secret agreements deal with a multitude of issues, most of them having to do with resolving CLECs complaints about Qwest's sub-par performance that was costing the CLECs money. Qwest—instead of correcting its conduct—bought off the complaining CLEC with the various secret agreements.

The CLECs that entered into the secret agreements with Qwest have sometimes been referred to as "favored" CLECs. We believe the term "favored" is a misnomer. Instead, from Qwest's point of view the CLECs that were parties to the secret agreements were "dangerous" CLECs. Let there be no mistake, these CLECs such as Eschelon and McLeod received favored treatment from Qwest, because they were some of Qwest's larger competitors that had the economic interest and resources sufficient to litigate with Qwest, if Qwest refused to address their concerns. They were the CLECs that Qwest could not force to go away through mere delay, denial and refusal to expeditiously correct matters. In essence, Qwest was buying off the silence of the very sector of the market that had both the information and the financial incentive to cause Qwest to change its behavior and act in conformance with the law.

This left the smaller CLECs that could not afford to litigate with Qwest, and other CLECs that had not yet realized Qwest was not performing, to suffer. CLECs were left at a disadvantage in their competition with the "dangerous" CLECs, and at a disadvantage in their efforts to compete with Qwest. It is difficult to imagine anything more harmful to competition and more destructive of the benefits that competition was designed to foster.

Qwest, through these secret agreements, did far more than fail to comply with the "technicalities" of Section 252(e) of the Telecom Act. This is not a situation, as Qwest contends, where there has been a mere technical failure to file a piece or two of paper. Instead, it is a situation where Qwest's conduct was consciously calculated to allow it to perpetuate Qwest's sloppy and unlawful business practices that directly harmed its competitors, that is, all of the other CLECs that were not a party to the multiple secret agreements.

ARIZONA DIALTONE IS AN ELIGIBLE CLEC

At the Hearing, both Qwest and Staff indicated that Arizona Dialtone is an eligible CLEC for purposes of the proposed Settlement. But Qwest has been evasive enough on this issue that any order approving the Settlement should include a finding that Arizona Dialtone and the other

CLECs that are participating in this process are considered eligible CLECs for purposes of participation in the Settlement, including its credit baskets and opt-in provisions.

ELIMINATE THE CAPS ON THE CLEC CREDITS

One uncertainty to address in the proposed Settlement Agreement is the upper limits placed on the CLEC credits. The caps should be eliminated.

Qwest claims that it has already estimated the total amount of CLEC credits reflected in the Settlement. We understand why the minimum settlement amounts in the Sections 3, 4 and 5 credits are appropriate. With the multitude of ways that Qwest can litigate or otherwise contend that it does not have to make payments to the CLECs, the minimum amounts in the CLEC Credit Sections remove at least some of the incentive for Qwest to act unreasonably in compensating the CLECs.

But the ceilings imposed on the CLEC credit baskets are much more troublesome. The CLECs do not have access to any data confirming the total amount of claims (only Qwest has such data), yet the CLECs are the ones that are taking all of the risk that Qwest may have underestimated the amounts. Qwest testified with great confidence that its estimates are accurate and that the maximum amounts will not be reached, but Qwest has no risk under the current proposed terms. Qwest's liability is capped whether its estimates are based on fact or fiction.

Considering this confidence that Qwest has in its numbers, why then does the proposed Settlement place all the risk on the CLECs for an error in Qwest's projections? There is no explanation and absolutely no justification for this.

The resolution is simple: eliminate the maximums specified in the settlement. This solution costs Qwest nothing, because it has all the data and it has all the confidence that its estimates are accurate. With this change, the CLECs will be able to evaluate the amount of the settlement based on their knowledge of their own claims, without having to weigh the unknown risk that other CLECs claims may cause their own claims to be discounted. Qwest should bear the risk that it has underestimated the credits, not the CLECs.

QWEST AGREES THE SECTION 3 CREDIT FOR ARIZONA DIALTONE IS $319,004.

Qwest has access to the information needed to calculate the CLECs' credits, and it has already done so. For example, Qwest determined Arizona Dialtone's §3 Discount Credit to be $319,004. *See* Exhibit AZD-1. This amount, $319,004, is undisputed. There is no reason why Qwest should not be required to make this payment to Arizona Dialtone immediately upon the Commission's approval of the Settlement. A direct order to do so should be included in any approval order along with similar direction for any other CLEC making a similar request based on Qwest's numbers.

THE RELEASE IS OVERBROAD

It was apparent from the testimony that the language in the release that Qwest proposed for the Settlement was not the subject of any meaningful negotiation. Instead, the release reads as if it were an opening negotiating position drafted by Qwest with the intent for it to be as broad and one sided as possible–a Qwest "wish list" so to speak. As part of a settlement Qwest should obtain a release, but it should only be a release of the particular claims for which compensation is being paid. At a minimum, the releases should be narrowly defined for each of the three credit sections to include only the claims that are the basis of the particular credit, the releases should be limited to the time periods applicable for each credit section, and the CLEC should only be required to sign-on to a release for the particular credit basket for which that CLEC is participating in.

The scope of the releases included under the CLEC credits sections should be defined with more certainty. They are currently defined only by the very broad scope of the Commission's Dockets, which leaves Arizona Dialtone and the other CLECs unable to evaluate the claims that they are releasing should they choose to participate in the Settlement.

As an illustration, it is apparent that for an extended period of time Qwest's DUF records system has been woefully deficient. These inaccuracies were the subject of a number of the secret agreements. It caused problems in Qwest's §271 testing, and more recently, Qwest was

found to be missing numerous records for Arizona Dialtone's lines causing significant damages in lost access revenues over the past year or more.

By releasing any claims relating to the secret agreements Docket, is Arizona Dialtone also releasing its inaccurate DUF records claims? It should not be, not unless Qwest is paying for all such claims, and Qwest is not under the Settlement. The CLEC credit periods in the proposed Settlement Agreement are narrowly drafted to begin and end on a certain specific dates. But the form of release drafted by Qwest contains nothing limiting its scope to the time periods in the Settlement. At least to the extent that the Section 5 credits are for different time periods than a CLEC's claims of inaccurate DUF records, the claims should not be covered by the release.

IMMEDIATE PAYMENT SHOULD BE MADE

It appears in the proposed Settlement that Qwest has settled up with the Commission and with the ratepayers. Qwest's obligations to make the payments to the State under Sections 1 and 2 are definite, speedy, and well-defined. But with respect to the payments to CLECs under Sections 3, 4 and 5, the Settlement Agreement reads as if litigation has just begun. Hardly anything is defined with certainty, and everything is subject to issues of proof with the burdens primarily placed on the CLECs that were harmed by Qwest's conduct. All these procedures need to be streamlined and initially based on the numbers Qwest has already generated, but not disclosed.

USE PROXIES FOR THE SECTIONS 4 AND 5 CREDITS

Qwest knows very well that its DUF records have been inaccurate. It paid off the "dangerous CLECs" to avoid these issues, and instead paid the "dangerous CLECs" a minimum collection level for access charges. Qwest also had problems with these issues in its §271 testing, and currently Qwest is again having major problems with supplying deficient DUF records to Arizona Dialtone. Qwest is currently making repeated, but unsuccessful, attempts to recreate its missing DUF records for the past year for Arizona Dialtone. But under the proposed Settlement, Qwest would require the CLECs to prove that Qwest's DUF records are inaccurate,

or Qwest can avoid giving this credit to the CLEC (or resort to further potential litigation).

There is no practical purpose served by making the CLECs prove to Qwest something that Qwest is already aware of and does not deny. Indeed, it is patently unfair for Qwest to require CLECs to prove something its witness admitted at the Hearing may be close to impossible to prove, that is the existence of calls which were not properly recorded at the time by Qwest.

Instead, this requirement for the CLECs to prove up both the inaccuracies and the amount of damages appears to be a remnant of the Minnesota Orders against Qwest. But the Minnesota Orders were not a result of a settlement agreement and instead were carefully drafted and redrafted by the Minnesota Commission to address specific remedy concerns under Minnesota statutes, and other jurisdictional issues unique to a state commission entering an involuntary Order forcing a utility to comply with state and federal law.

In the context of this Settlement and in the interest of efficiency and certainty, the parties can mutually agree to certain payments or credits in order to resolve and compromise claims and other outstanding issues. In this case, instead of going through CLEC by CLEC and addressing each of the document production, proof and accounting issues one by one, the average payment per line per month made by Qwest to Eschelon should be used as a proxy for the amount of credit owing to each CLEC. This would make the calculation of the amount of credit to each CLEC quick, easy, and definite. And, it is exactly how Qwest has made its internal estimates, according to testimony at the Hearing.

For all of its projections, Qwest used its average payments under its secret agreements as a proxy to estimate the claims from the CLECs. But for the actual credits in the proposed Settlement Agreement, Qwest says prove it up or shut up. That is not a settlement. That is an invitation for further litigation.

Qwest should be required to notify each and every CLEC of the amount of credits based on the proxy amounts ($0.96, $2.41, and 3.14) under each part of Sections 4 and 5 of the

proposed Settlement. Then, for the CLECs to claim and collect that amount, there should be no further document exchange required, and no further litigation over whether Qwest has adequately concealed its malfeasance or whether the CLEC has been adequately able to uncover Qwest's inaccurate data. The proxy amount should be provided by Qwest with no questions asked, and it should be done immediately and credited to each CLEC's account within ten days.

We understand that Qwest may want to keep these numbers confidential, and in the interest of its CLECs, not publish them to everyone involved. But certainly the full schedule of numbers of who Qwest is planning on paying and how much should be provided to the Commission for review. If these numbers don't add up to the numbers listed in the Settlement Agreement, something is amiss.

At the same time, we have no objection if any CLEC wants to keep the specific proof mechanisms in the Settlement instead of opting for the efficient use of proxy amounts. But that should be at the option of the CLECs, and we doubt whether many CLECs, if any, will try to fight about "reinventing the wheel" or, in this case, recreating records that Qwest fouled up or purged or failed to record in the first place.

The alternative is to create a huge documentation mess like the one Qwest is currently waging in Minnesota. After the Hearing on the proposed Settlement in this matter, Qwest served all of the CLECs in Minnesota with subpoenas, seeking the voluminous documentation required in the Minnesota Order. *See* copy attached as Exhibit 1. There is no reason for this cumbersome and costly process in this Settlement context.

In summary, the Settlement should avoid a methodology under which Qwest and the CLECs will probably enter into discovery and proof disputes. Instead, Qwest's proxy amounts should be used to calculate each CLEC's credit and that proxy amount should be offered without question.

QWEST'S DELAY IN UNE-P CONVERSION

Arizona Dialtone had repeatedly requested Qwest to convert its payphone lines from wholesale discount pricing to UNE-P. Qwest repeatedly refused, claiming that it wasn't legally required to do so. This delay tactic by Qwest held back UNE-P implementation for payphone lines for years. As a result, Arizona Dialtone and other CLECs were unable to effectively compete with Qwest through pricing discounts, which left Qwest's inordinately high payphone line rates in place. Also, Arizona Dialtone was in effect delayed for years from being able to economically establish a UNE-P billing system which was necessary for it to implement its prepaid residential service.

This standoff on UNE-P pricing went on until one of the major CLECs, Ernest Communications, brought a formal FCC Complaint against Qwest, and as part of a settlement, Qwest agreed to offer payphone lines under UNE-P pricing. Then, even after Arizona Dialtone was informed that Qwest would convert its lines to UNE-P, it still took Qwest seven or eight months to implement the change. In essence, with the way the proposed Settlement is currently structured, this wrongful delay in wholesale pricing implementation by Qwest has left Arizona Dialtone able to participate for only a few months in the Section 4 Access Line Credits and the Section 5 UNE-P Credits.

Qwest acted wrongfully and anti-competitively in the delayed implementation of wholesale pricing for Arizona Dialtone. Furthermore, Qwest had dealt directly with this issue in its secret agreement with Global Crossing, another one of Qwest's larger, multi-state CLECs.

For Global Crossing, Qwest rolled back the conversion many months and agreed to pay massive amounts in the difference in the tariffed rates between UNE-P and the percentage discount rates that Global Crossing had been paying.

The Settlement Agreement provides for the CLECs to opt-in to the "non-monetary provisions" in the secret agreements. In accordance with this Section 10 provision, Arizona Dialtone should be allowed to opt-in to the timing provision that rolled back the conversion of

UNE-P, and remedied Qwest's wrongful delays. That would make Arizona Dialtone eligible for the Section 4 and Section 5 discount credits for its lines for the full length of time covered by those provisions in the proposed Settlement.

The Settlement Agreement calls for all "related terms" to be adopted by a CLEC that opts-in to any of the other non-monetary terms of the other secret agreements. But what Qwest considers a related term, and what someone else may consider "related" can be significantly different. For Example, Qwest's counsel has argued in its Post-Hearing Memorandum, at pp. 44-45, filed May 1, 2003, in Dockets RT 00000F-02-0271 that not only must related terms that are contained in the agreement being opted-in to be adopted, but additional terms found in other different but related agreements that were executed in the same time period must also be applied. We have no idea what Qwest may consider a "related" term for the Global Crossing agreement. Most likely it would not be that massive rebate of the tariff charges that was paid by Qwest to Global Crossing, but the record is silent as to what other agreements Qwest had that it may claim to be related. In order to clarify this issue, the Commission's Order should include a statement that there are no such other related terms in the case of the Global Crossing secret agreement.

THE TIME FOR THE CREDITS SHOULD BE FOR THE FULL DURATION OF THE SECRET AGREEMENTS

Although Qwest contends that it did nothing wrong, it also apparently contends that regardless of whatever it was doing in the past, it cleaned up its act with the termination of the secret agreements. We do not agree that Qwest paying its "dangerous CLECs" to terminate its secret agreements provides any indication that Qwest has stopped its wrongful conduct, but in any event, the credits should be continued for a time period equal to the full intended five year term of the secret agreements. Qwest paid its "dangerous CLECs" to terminate the secret agreements early, and that payment by Qwest should not be allowed to limit its liability to the other CLECs that were not allowed to participate in the agreements and not allowed to participate in the early termination payments.

CASH PAYMENTS INSTEAD OF CREDITS

The CLEC credits should not be limited to "credits" as currently specified in the proposed Settlement. Instead, the "credits" should be made as cash payments if the CLEC has insufficient ongoing business to justify the "credit" method of payment. Also, there should be limits on how Qwest is to apply the credits. It should not be allowed to apply the credits to an outstanding bill that is the subject of a good faith billing dispute by the CLEC.

Although Arizona Dialtone certainly prefers cash payment, we have no objection to credits if properly applied, and if interest is paid on any unused balance, and if the CLEC has sufficient ongoing business with Qwest to justify a "credit" returning the full value of the settlement within a reasonable time (not to exceed three or four months). If the credit is not fully consumed at the end of this three or four month period, Qwest should be required to settle-up with the CLEC and pay the remainder plus interest in cash. Such a payment method would remove any reward to Qwest for the CLECs that it has already driven out of business.

In order for a CLEC to effectively utilize the credits specified in the proposed Settlement, it must be in business. This is most likely the reason Qwest was ordered to make payments or credits in the Minnesota Orders. Many CLECs have already exited the Arizona market, and Arizona Dialtone may soon be in the same situation.

Qwest has filed a revision to its retail PAL Tariff that is currently pending in a different Docket in which it proposes to reduce its payphone line rate to a level significantly below even a residential line. Arizona Dialtone is Qwest's only significant competitor for payphone lines in Arizona. If Qwest is successful in reducing its retail PAL rates to such low levels—below its residential rates—below its UNE-P rates—and below its similar rates in other states—Arizona Dialtone may no longer be in business, or at least we may not be operating in a form anywhere close to the current business. As with other CLECs that are no longer operating, if Arizona Dialtone goes out of business, under the wording of the proposed Settlement, Qwest will wind up paying nothing on its credit claims. This situation is not in the public interest, as it rewards

Qwest for its wrongful conduct. In order to eliminate this backwards incentive, the proposed Settlement should be modified to require Qwest to make cash payments to the CLECs if there is insufficient ongoing business to promptly utilize the credits.

PRE-JUDGMENT AND POST JUDGMENT INTEREST.

For years Qwest wrongfully deprived CLECs of compensation, and unlawfully charged them more for services than Qwest was charging the "dangerous CLECs." Qwest should be required to pay interest on these damages. We expect Qwest may argue that the question as to when a liability is liquidated for purposes of pre-judgment interest is a murky area of the law, but in a settlement context that does not matter. Qwest has deprived the CLECs of substantial revenues and overcharged them for their services, and they should be required to pay interest on the relatively small amounts that Qwest is agreeing to pay back.

In addition, there is no question whatsoever that in a court of law post-judgment interest is available, is appropriate, and mandated. Interest on the credit baskets from the date of Commission approval would also be an incentive for Qwest to act quickly and reasonably.

In a settlement context, it is certainly appropriate for Qwest to pay interest, both pre-judgment and post-judgment at the legal rate of 10% per year.

DISPUTE RESOLUTION

The Settlement should contain a dispute resolution and consent to jurisdiction provision. Such a provision would minimize future potential litigation with Qwest over whether a claim should be in state court, federal court, the Arizona Corporation Commission, or the FCC. To remove any potential for game playing, there needs to be a provision stating that Qwest agrees and consents to the jurisdiction of the Arizona Corporation Commission as the proper forum for resolution of any disputes related in any way to this Settlement.

CONCLUSION

As presently written, the Settlement Agreement is <u>not</u> fair or reasonable or in the public interest. This Qwest draft does <u>not</u> bring closure, finality, or certainty to enough issues in a fair

manner. Every witness at the Hearing seemed to acknowledge that changes and clarifications are needed.

It is respectfully submitted that Arizona Dialtone's suggested modifications and clarifications are the minimum needed to make the Settlement fair and reasonable.

RESPECTFULLY SUBMITTED this 15th day of October, 2003.

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CERTIFICATE OF SERVICE

I certify that the original and 17 copies of the foregoing were hand-delivered this 16th day of October, 2003, to:

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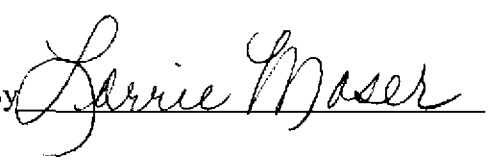
By 

EXHIBIT 1

AO88 (Rev. 1/94) Subpoena in a Civil Case

Issued by the

UNITED STATES DISTRICT COURT

DISTRICT OF Minnesota

Qwest Corporation

V.

LeRoy Koppendrayer, et al.

SUBPOENA IN A CIVIL CASE

Case Number:[1] 03-3476 ADM/JSM

TO: Arizona Dialtone

☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME

☑ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Please see attached.

PLACE	DATE AND TIME
Dorsey & Whitney, 50 South Sixth Street, Minneapolis MN 55402	October 16, 2003

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR	DATE
Shannon M. Heim	September 22, 2003

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Shannon M. Heim, Attorney for Plaintiff Qwest Corporation

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

[1] If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 1/94) Subpoena in a Civil Case

PROOF OF SERVICE

DATE	PLACE
SERVED September 22, 2003	

SERVED ON (PRINT NAME)	MANNER OF SERVICE
Arizona Dial Tone	U.S. Mail
SERVED BY (PRINT NAME)	**TITLE**
Shannon M. Heim	Attorney

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on September 22, 2003
DATE

Shannon M. Heim
SIGNATURE OF SERVER

50 S. Sixth Street
ADDRESS OF SERVER

Minneapolis, MN 55402

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to comply production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in who behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

EXHIBIT A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are commanded to produce the documents specified in this document request pursuant to the accompanying subpoena.

DEFINITIONS AND INSTRUCTIONS

1. If one or more documents called for by this request are withheld under a claim of privilege, furnish a list of documents for which the privilege is claimed and, with respect to each such document, provide the following information: the date of the document, the name(s) and address (es) of each person who has prepared, reviewed, received or has had possession, custody or control of the document, subject matter, location of document, and a statement of the basis upon which the privilege is claimed.

2. "Document" means any non-identical printed, typewritten, handwritten, or otherwise recorded matter of whatever character, including but not limited to, letters, memoranda, telegrams, notes, agreements, diaries, date books, reports, work papers, calendars, inter-office communications, statements, mechanical or sound recordings or transcripts thereof, computer printouts, mechanical or magnetic storage media, and any carbon or photostatic copies of such material if Plaintiff does not have possession, custody or control of the original.

3. "Communication" means any transmission of words or thoughts between or among two or more persons, whether written or oral.

4. If any document requested to be produced was but is no longer in Plaintiff's possession or control or it is no longer in existence, state whether it is:

(a) missing or lost,

(b) destroyed,

(c) transferred voluntarily or involuntarily to others and, if so, to whom,

or

(d) otherwise disposed of,

and in each instance explain the circumstances surrounding the authorization for such disposition thereof and state the approximate date thereof.

5. "Person" means natural persons, corporations, partnerships, sole proprietorships, unions, trusts, associations, any unincorporated organization or governmental or political subdivision thereof, federations, joint stock companies, or any other kind of entity.

6. "Relating to" means concerning, referring to, alluding to, responding to, connected with, commenting on, in response of, about, regarding, announcing, explaining, discussing, showing, describing, studying, reflecting, analyzing, or constituting.

7. "Identify," when applied to a document, means to state:

(i) its description (e.g., letter, memorandum, report, etc.);

(ii) its title and date of generation, and the number of pages thereof;

(iii) its subject matter;

(iv) its author;

(v) the person or persons to whom it was directed; and

(vi) its present location and the identity of the person presently having possession, custody, or control of such document.

Whenever you are requested to identify a document, you may submit the document itself in lieu of any identification, which is apparent from the face of the document.

8. "Identify," when applied to an oral communication, means to state:

(i) its date;

(ii) its subject matter and content;

(iii) the speaker;

(iv) the person or persons to whom it was directed; and

(v) all other persons participating in or witnessing the communication.

9. The singular includes the plural and the plural includes the singular, and the masculine includes the feminine, where appropriate to the sense of the Request. The words "and" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring information within the scope of the production request.

10. The documents shall be produced at the offices of DORSEY & WHITNEY LLP, 50 South Sixth Street, Suite 1500, Minneapolis, Minnesota 55402, to the attention of Robert E. Cattanach, Esq.

11. All documents shall be produced in the order and in the manner, which they are kept in the usual course of business or organized and labeled to correspond with the categories in this request. All retrievable information in computer storage shall be produced in printed form.

DOCUMENT REQUESTS

1. Provide to Qwest those documents showing a month-by-month accounting of the aggregate amounts billed to other carriers for all access service charges, including intra- and interLATA toll, originating and terminating, for the time period of November 2000 through February 2002 over UNE-P lines leased from Qwest in Minnesota.

2. Provide those documents that identify all systems, documents, and communications relied upon to develop the bills referred to in Document Request #1 of this Exhibit A.

3. Provide all documents that discuss or explain (a) how the information, procedures or processes relating to access services provided by Qwest in any way affected your ability to bill interexchange carriers in Minnesota and (b) how, if at all, those procedures, processes, or information provided by Qwest differed from those generally relied upon to bill interexchange carriers for access service charges.

4. If you did not previously, or do not now, bill Interexchange Carriers for switched access over UNE-P lines in Minnesota, please provide all documents that would establish why you believe you are entitled to the credits at issue.

5. If you allege, have alleged, or will allege that it received inaccurate daily usage information for UNE-P lines in Minnesota during the time period of November 15, 2000 and March 1, 2002, provide all documents that identify and explain the nature of the inaccuracies in detail, providing all documentation and communications concerning such inaccuracies.

6. Provide all documents that identify and explain any actions taken by you after you discovered any alleged inaccuracy of daily usage information for UNE-P lines in Minnesota that discuss or refer to this issue.

7. Provide all documents for the months from November of 2000 to February, 2002 that suggest your contention that you, including without limitation:

   a. The average number of UNE-P lines you leased from Qwest in Minnesota, in service for each such month that you believe you did not receive accurate daily usage information.

   b. The aggregate amount you actually billed interexchange carriers for switched access originated and terminated through such UNE-P lines in Minnesota for each month in which you believe Qwest's daily usage information was inaccurate.

8. Provide all documents showing amounts collected by you from Qwest for termination of intraLATA toll traffic over UNE-L or UNE-P lines in Minnesota.

9. Provide all documents showing the average number of UNE-P lines and unbundled loops leased by you from Qwest in Minnesota in service per month from July 2001 through February 2002.

10. Provide all documents showing the amounts you actually collected from Qwest for terminating intraLATA switched access for the UNE-P lines or unbundled loops in service in Minnesota, for each month from July 2001 through February 2002.

Dated: September 18, 2003

DORSEY & WHITNEY LLP

By _____

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